

17 AAC is amended by adding a new chapter to read:

## **Chapter 97. Naturally Occurring Asbestos**

### **Section**

10. Applicability

20. Bulk testing method and laboratory requirements

30. Procedures for establishment of “designated area”

40. Procedures for submission and review of site specific plans

50. Responsibilities

60. Definitions

**17 AAC 97.010. Applicability.** This chapter applies to the means by which landowners and contractors are granted immunity under AS 09.65.245(a) for causing asbestos-related injuries. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

<b>Authority:</b>	AS 09.65.245	AS 44.42.400	AS 44.42.430
	AS 44.42.030	AS 44.42.420	

**17 AAC 97.020. Bulk testing method, sampling protocol and laboratory requirements.** The testing method used to determine the percentage of Naturally Occurring Asbestos (NOA) contained within gravel or other aggregate material to be used in projects described in this chapter shall be the *California Air Resources Board Method 435 (CARB 435*

dated June 6, 1991) with the lowest detection limit of 0.25 percent using the “400 non-empty point” calculation. The *DOT&PF NOA Sampling and Classification Protocol* establishes the method for samples taken in undeveloped areas (dated November 14, 2014). Laboratories doing the analysis shall be certified by the National Institute of Standards and Technology’s National Voluntary Laboratory Accreditation Program (NIST/NVLAP). (Eff.\_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority:	AS 18.31.260	AS 44.42.030	AS 44.42.420
	AS 44.42.020	AS 44.42.400	AS 44.42.430

**Editor’s note:** Copies of the *California Air Resources Board Method 435* (CARB 435 dated June 6, 1991) adopted by reference in 17 AAC 97.020 may be obtained by writing to the California Air Resources Board, P.O. Box 2815, Sacramento, CA, 95812. Electronic copies may also be viewed through the California Air Resources Board Internet website at:

[http://www.arb.ca.gov/testmeth/vol3/M\\_435.pdf](http://www.arb.ca.gov/testmeth/vol3/M_435.pdf).

Copies of the DOT&PF NOA Sampling Protocol adopted by reference in 17 AAC 97.202 may be obtained by writing to the Alaska Department of Transportation & Public Facilities, P.O. Box 112500, Juneau, AK 99811-2500. Electronic copies may also be viewed through the Alaska DOT&PF website at: <http://www.dot.state.ak.us/stwddes/desmaterials/noa.shtml>.

**17 AAC 97.030. Procedures for establishment of “designated areas”.**

(a) Procedures for establishing a “designated area” at the request of a municipality or person outside the limits of a municipality:

(1) if all or part of the proposed “designated area” is within the limits of a municipality, the applicant must be the municipality.

(2) if the proposed “designated area” is inside the limits of a community and outside the limits of a municipality, then the community may apply.

(3) if the proposed “designated area” is outside the limits of a community and outside the limits of a municipality then any person may apply.

(4) the applicant may request the establishment of a “designated area” by submitting an application to the department containing the following:

(A) a cover letter addressed to the department’s Chief Engineer requesting the establishment of a “designated area” under AS 44.42.400. If the applicant is a municipality, the letter may be signed by the principal executive officer, an elected official, or other authorized employee;

(B) a resolution from the governing elected body of the municipality requesting the designation of the area under AS 44.42.400(b), if any part of the proposed designated areas is within a municipality;

(C) a specific description of the proposed boundaries of the “designated area” with documentation describing the rationale for these proposed boundaries. The description will include mapping that depicts the limits of the proposed “designated area” and the material sites evaluated under 17AAC 97.030(a)(4)(D) and (E);

(D) reports of tests documenting the presence of NOA in gravel or other aggregate material in the proposed “designated area” that, when tested using the bulk test

method prescribed in 17 AAC 97.020, is determined to have a content equal to or greater than 0.25 percent of naturally occurring asbestos; those test results shall include information regarding sampling protocols used to establish the presence of NOA;

(E) information related to the availability of gravel or other aggregate material free from NOA in the proposed “designated area”;

(F) information related to the project costs associated with using NOA;

and

(5) upon receipt of an application, the department will not issue a determination until it has:

(A) reviewed all information submitted;

(B) analyzed the effect of the presence of NOA on construction projects in the proposed “designated area”; and

(C) solicited and considered public input.

(6) in addition to the information required in (3) of this section, the department may request that additional information or studies it determines relevant and necessary, to include additional testing, sampling or surveys, be provided in order to process the application. The department shall not pay for, conduct, or contract for any testing required to process the application.

(7) the department will process the application within 90 days of receipt of the complete application. If needed, the department will issue a public notice to extend the 90 days.

(8) the department will issue a written determination of approval or disapproval

of the application; if approved, the approval will contain a specific description of the boundaries of the “designated area”. A copy of the written determination will be provided to the applicant.

(9) the department may wholly approve or wholly disapprove an application; the department may also revise the boundaries proposed by the applicant of the area to be established as a “designated area”.

(10) after approval of a “designated area”, the department shall notify potentially affected persons that the area has been designated as an area where immunity may be granted under AS 09.65.245(a) for landowners and contractors causing asbestos-related injuries.

(11) The/an applicant may request the “designated area” be withdrawn from designation by the department at any time. If the “designated area” is a municipality or a community, then the municipality or the community must be the applicant to withdraw. The department will solicit and consider public input for withdrawal of the “designated area”. If a “designated area” is withdrawn from designation, immunity for projects with site specific plans previously approved by the department shall continue for those projects as if the area remained a “designated area” for the purposes of asserting immunity under AS 09.65.245(a). To retain immunity as afforded in AS 09.65.245(a), the projects must continue to be maintained following the approved Monitoring and Mitigation Plan.

(b) Procedures for establishing “designated areas” for department projects

(1) if any part of the proposed “designated area” under this subsection is within a municipality, the department will secure a resolution from the governing body of the municipality in which the proposed area is located supporting the establishment of the “designated area”.

(2) the department will also document the following:

(A) a specific description of the proposed boundaries of the “designated area”;

(B) tests documenting the presence of NOA in the area, including information regarding testing methods and sampling protocols used to establish the presence of naturally occurring asbestos;

(C) information related to the availability of gravel or other aggregate material free from NOA in the area;

(D) information and analysis related to the project costs associated with using NOA; and

(E) any other information that the department identifies as relevant to the establishment of a “designated area” as proposed.

(3) upon establishing a file documenting the information required in (b)(1) and (b)(2), of this section, the department shall solicit and consider public input from residents within the proposed “designated area”.

(4) the department will issue a written determination establishing the “designated area” containing a specific description of the boundaries of the “designated area”. A copy of the written determination shall be provided to the governing body of the municipality, if applicable.

(5) after a “designated area” has been established, the department shall notify potentially affected persons that the area has been designated as an area where immunity may be granted under AS 09.65.245(a) for landowners and contractors causing asbestos-related injuries.

(6) a “designated area” may be withdrawn from designation by the department at any time. The department will solicit and consider public input for withdrawal of the “designated area”. If a “designated area” is withdrawn from designation, projects with site specific plans undertaken by the department shall continue as if the area remained a “designated area” for the purpose of asserting immunity in connection with those projects under AS 09.65.245(a). To retain immunity under AS 09.65.245(a), the projects must continue to be maintained following the approved Monitoring and Mitigation Plan. (Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_, Register\_\_\_\_)

**Authority:** AS 44.42.030 AS 44.42.420 AS 44.42.430

AS 44.42.400

**17 AAC 97.040. Procedures for submission and review of site specific plans.**

(a) Submission of site specific plans under AS 44.42.410:

(1) an applicant intending to use NOA material at levels at or exceeding those established under AS 44.42.410, from within an area designated under 17 ACC 97.030 and who is seeking immunity provided under AS 09.65.245(a)(2), shall submit a site specific plan to the department. The site specific plan must be certified in writing by a certified industrial hygienist or a licensed professional engineer with project designer training. The applicant submitting the site specific plan will include concurrence from all landowners nearby, project owner and the entity responsible for maintenance. The applicant will submit a cover letter to the department’s Chief Engineer stating the site specific plan is being submitted as required under AS 44.42.410 and include the following information:

(A) identify the project, construction start and projected completion date;

(B) identify the project owner and the entity responsible for the project maintenance;

Site specific plans submitted to the department will be reviewed under 17 ACC 97.040(b).

(2) for projects undertaken by the department or contracted by the department, where the department or its contractors are intending to use NOA material at levels at or exceeding those established under AS 44.42.410, from within an area designated under 17 ACC 97.030 and the department is seeking immunity provided under AS 09.65.245(a)(2), the department shall produce a site specific plan. The site specific plan must be certified in writing by a certified industrial hygienist or a licensed professional engineer with project designer training. In addition to the information required in 17 AAC 97.040(a)(3), the department shall document the following information in a site specific plan developed by the department:

(A) identify the project, construction start and projected completion date;

(B) identify all landowners nearby;

(C) site specific plans developed by the department will be completed as referenced in 17 ACC 97.040(a)(3);

(3) at a minimum, a site specific plan as referenced in AS 44.42.410 shall contain the following information:

(A) a description of the project, project components and intended long-term use of the project;

(B) the applicant's address and telephone number. The applicant will identify all landowners nearby, then the applicant shall attach signed and dated approval



letter(s) from all landowners, the project owner and the entity responsible for maintenance which are affected by the project;

(C) map depicting the specific location of the project boundary and proposed material sites and the boundary of the designated area established under 17 AAC 97.030;

(D) plans, specifications, and material quantity estimates for construction involving material containing NOA, the location and depths of material containing NOA to be incorporated into the project, and identification of material free from NOA that will cover and/or seal the material containing NOA. In all cases where material containing NOA has been used, the material containing NOA will be covered and/or sealed with material free from NOA with the following exception(s):

(i) NOA material is an integral part of the production of asphalt concrete, portland cement concrete or other similarly cemented materials; or

(ii) NOA material is used as rip rap; or

(iii) NOA material is used as slope stabilization.

(E) a narrative of the benefits of using material containing NOA on the project, which will include a cost analysis comparing using material containing NOA to using material that is free from NOA. NOA material costs will include all costs to develop a Site Specific Plan, costs to implement the Sampling and Analysis Plan, costs to implement the Asbestos Compliance Plan, and the costs to implement the Dust Control Plan;

(F) a Sampling and Analysis Plan (SAP) for construction activities required under (a)(3) of this section shall include:

(i) details of investigations to identify sources of material not containing NOA in area;

(ii) identification of the NOA testing method used;

(iii) description of the NOA sampling protocol used;

(iv) test results of soil samples from known material sources or areas of anticipated ground disturbance identifying NOA concentrations, including mapped locations; and

(v) a narrative description of plans to minimize the use of material containing NOA.

(G) an Asbestos Compliance Plan (ACP) for construction activities required under (a)(3) of this section shall include:

(i) the identification of those work tasks on the project with the potential for exposure to material containing NOA;

(ii) a project specific job hazard analysis detailing steps that are to be taken to prevent or minimize worker exposure to asbestos using engineering or administrative controls and/or personal protective equipment, to include:

(1) a description of Personal Protective Equipment (PPE) to be used on site;

(2) a description of decontamination practices and equipment to be used;

(3) a description of general safe work practices to be employed;

(4) a description of site security measures;

(5) a description of changed conditions response plans;

(iii) a description of the training to be received by those workers with potential exposure to NOA. Training must be appropriate for responsibilities and potential for exposure;

(iv) a worker/public exposure air monitoring plan. The air monitoring plan will specify type of sampling device(s), siting of air sampling device, sampling durations and frequency and the analytical method. The personnel performing the monitoring and sampling will be supervised by an individual certified with the Sampling and Evaluating Airborne Asbestos Dust, Course 582 (*NIOSH 582* dated 1988) or equivalent;

(1) area air monitoring test documenting the presence or absence of airborne fibers from NOA using the test method prescribed in the *National Institute for Occupational Safety and Health test method "Asbestos and Other Fibers by PCM"* (*NIOSH 7400* dated August 15, 1994). Fiber counts shall not exceed a 24 hour average public exposure concentration greater than or equal to 0.020 fibers per cubic centimeter of air;

(2) a personal air monitoring test documenting the presence or absence of airborne fibers from NOA using the test method prescribed in *NIOSH 7400*. The worker permissible exposure limit (PEL) shall not exceed:

(a) an eight hour time weighted average full shift airborne concentration of 0.1 fibers per cubic centimeter of air; and

(b) one fiber per cubic centimeter of air as averaged over a sampling period of 30 minutes;

(v) a description of public notification to be made during the construction phase regarding use of material containing NOA, including a description of proposed signage to be placed near the project area during construction.

(H) a Dust Control Plan (DCP) for construction activities which will include plans to prevent visible dust emission during excavation, stockpiling, transportation, or placement of material containing NOA;

(I) a draft Monitoring and Mitigation Plan (MMP) for post construction which will include the following:

(i) the long term monitoring and mitigation plan signed by the entity responsible for maintenance for the completed project;

(ii) a description of operational and maintenance strategies and timelines for the entity responsible for maintenance for protecting, testing and reconstructing covering materials over the material containing NOA in the project; and

(iii) a description of planned public notification measures for the entity responsible for maintenance to ensure the public is made aware of material containing NOA in the area.

(4) at any time the applicant submitting the site specific plan may request revision of all or any component of the approved site specific plan by submitting the proposed changes for the department's approval along with a cover letter as specified under (a) of this section. A contractor or project owner making, instituting and/or implementing revisions to an approved site specific plan without the written approval of the department under this subsection will render void any earlier approval of the department under (a) of this section;

(5) the applicant will submit all components of the Site Specific Plan at least 60 days before ground disturbing activities start. All components of the Site Specific Plan must be approved before ground disturbing activities begin. The applicant submitting revisions to an approved site specific plan under (b) of this section will submit all revised components of the Site Specific Plan at least 60 days before proceeding under the terms of the revised Site Specific Plan.

(6) the final MMP will be submitted within 120 days after construction is completed. The final MMP will include the MMP as modified under (b)(4) supplemented by as-built plans identifying the final locations for material containing NOA and the cover or sealing material used.

(7) the applicant will submit construction monitoring records within 120 days after construction is complete.

(8) the Contractor shall comply with the recordation and notification requirements of AS 44.42.410(g).

(b) The process for the review of a site specific plan is as follows:

(1) the department may request any additional information to supplement any component of a site specific plan.

(2) following a preliminary review of a site specific plan by the department, the department shall consult with and seek comments, regarding the draft MMP required under

(a)(7) this section, from the following state agencies:

(A) the Department of Environmental Conservation;

(B) the Department of Health and Social Services;

(C) the Department of Natural Resources;

(D) the Department of Law; and

(E) the Department of Labor and Workforce Development;

(3) each reviewing agency specified in (b)(2) of this section shall be allowed ten working days after receipt of the draft MMP to review the draft MMP with regard to human health concerns arising out of gravel or other aggregate material containing NOA and may recommend either approval, disapproval or modification to the draft MMP. Failure of an agency to timely make a recommendation shall be considered a recommendation for approval of the MMP. Upon agency request, the department may grant an additional ten working days to review the MMP;

(4) the department will consider agency recommendations regarding the MMP, will consider the entire site specific plan and will issue a written determination approving or disapproving the site specific plan.

(5) on approval of the site specific plan, the department shall:

(A) provide the applicant and the mayor or administration executive, if applicable, with a copy of the approved site specific plan including the approved MMP.

(B) require the applicant to submit all asbestos-related data collected during construction be submitted to the department;

(6) The project owner will comply with the recording requirements of AS 44.42.410(g).

(7) all approved site specific plans, whether submitted to the department or produced by the department, and all associated documentation shall be permanently retained by the department. (Eff.\_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 09.65.245 AS 44.42.410 AS 44.42.430

AS 44.42.030 AS 44.42.420

**Editor's Note:** Copies of Sampling and Evaluating Airborne Asbestos Dust, Course 582, dated 1988, adopted by reference in 17 AAC 97.404 may be obtained through the U.S. Department of Commerce National Technical Information Service website at:

<http://www.ntis.gov/search/product.aspx?ABBR=PB89184568>

Copies of the *National Institute for Occupational Safety and Health test method “Asbestos and Other Fibers by PCM”* (NIOSH 7400 dated August 15, 1994) adopted by reference in 17 AAC 97.040 may be obtained by writing to the Center for Disease Control and Prevention 1600 Clifton Road, Atlanta, GA, 30333. Electronic copies may also be viewed through the National Institute for Occupational Safety and Health internet website at:  
<http://www.cdc.gov/niosh/docs/2003-154/pdfs/7400.pdf>

**17 AAC 97.050. Responsibilities.**

(a) The project owner and the contractor(s) are responsible to fulfill their respective requirements of the approved site specific plan. The contractor will ensure that all parties involved with the project including subcontractors comply with the approved site specific plan.  
(Eff. \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_)

**Authority:** AS 44.42.030                      AS 44.42.420                      AS 44.42.430

**17 AAC 97.060. Definitions.**

- (a) For the purposes of this chapter, the following definitions apply:
- (1) “contractor” means the principal construction contractor or in the absence of an identified principal construction contractor, the person having legal authority for the design and construction of the project;
  - (2) “department” refers to the Department of Transportation and Public Facilities;
  - (3) “designated area” means the area designated by the department as an area where landowners and contractors are granted immunity under AS 09.65.245(c) for causing asbestos related injuries;



(4) “landowner” means the owner of the surface estate affected by the use of NOA bearing materials in the project and the owner of the subsurface estate of land affected by the use of NOA bearing materials in the project;

(5) “material free from Naturally Occurring Asbestos” refers to material that may contain Naturally Occurring Asbestos at a concentration of less than 0.25 percent using the “400 non-empty point calculation” California Air Resources Board Method 435;

(6) “municipality” as used in these regulations has the definition set out at AS 29.71.800(13);

(7) “naturally occurring asbestos” means asbestos-containing material that has not been processed in an asbestos mill and that, when tested using a bulk method prescribed by the Department of Transportation and Public Facilities, is determined to have a content equal to or greater than 0.25 percent naturally occurring asbestos. A list of asbestos minerals includes, but is not limited to, chrysotile; asbestiform (fibrous) varieties of amphiboles cummingtonite-grunerite (commercially called amosite), riebeckite (commercially called crocidolite), tremolite, anthophyllite, actinolite, winchite, richterite, and fluoro-edenite; and asbestiform zeolite erionite.

(8) “monitoring and mitigation plan” means the plan used for the post construction period or maintenance;

(9) “person” means an individual, corporation, tribal council, community as defined in AS 42.44.400(d), or any other entity;

(10) “project owner” means the entity having legal authority for the design and construction of a project;

(11) “rip rap” means material used to construct a loose assemblage of stones to provide embankment stability or shoreline protection to prevent erosion; (Eff.\_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 44.42.030 AS 44.42.420 AS 44.42.430

AS 44.42.400